IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21720 of 2004

Between:

Jaypeem Granites Pvt.Ltd., rep by its Managing Director

Mr.Harvesh Marwaha, O/o.6-3-953/72, Naveen Nagar,
Hyderabad.500 004.

..... PETITIONER

AND

1. Andhra Pradesh Industrial Infrastructure Corporation. rep by its Senior

Manager, Mr.M.Narasimha Rao, O/o.5-9-58/8, Parishrama Bhavan,
Fateh Maidan Road, Hyderabad-028,

2 Andhra Pradesh Industrial Infrastructure Corporation,

Mr.K.Narasimha Rao IE, O/o. The Senior Manager (E), Sanathnagar,
Hyderabad-500 018.

3 Sree Tirumala Srinivas Casting Pvt Ltd.,
Shed No.D-58, Phase-V,
IDA.Jeedimetla, Hyderabad-500 055.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 2nd respondent in issuing show cause notice LR.No.58/DAJ/P-V/92/1129 dated 18th Novermber, 2004 as illegal and arbitrary and unconstitutional and pass such other further order or orders as this Hon'ble Court may be deemed fit and proper on the facts and in the circumstances of the case, including the awarding of costs of these proceedings to the petitioner and render justice.

Counsel for the Petitioner:MR.M.S.SRINIVASA IYENGAR

Counsel for the Respondent Nos.1 and 2: MR.JANARDHAN RAO KOTAMA RAJU

The Court at the admission stage made the following Order:

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.21720 OF 2004

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the second respondent in issuing the impugned notice dated 18.11.2004 as illegal, arbitrary and unconstitutional.

The brief facts of the case are as follows:

In pursuance of an advertisement by Debt Recovery Tribunal (for short 'DRT') to conduct public auction for sale of Industrial land situated at Shed No.D-58, Phase V, IDA, Jeedimetla, Hyderabad consisting of factory shed and double storied building, the petitioner Company participated in the auction held on 19.11.2004 and became the highest bidder. Accordingly, it paid the bid amount and a sale certificate was issued by DRT and since then, it has been in possession and enjoyment of the shed. While the matter stood thus, the second respondent issued the impugned notice calling upon the third respondent to show cause as to why the allotment of the shed should not be cancelled duly determining the Lease-cum-Sale Agreement dated 26.10.1992 forfeiting the amount paid by it. A copy of the said show-cause notice was marked to the petitioner Company as it is the highest bidder in the auction conducted by DRT. Challenging the same the present writ petition is filed.

Learned counsel appearing for the petitioner vehemently contended that the auction conducted by DRT had become final and therefore, the proceedings cannot be reopened and if the respondent-Corporation wants to challenge the same, it has to file a suit for setting aside the sale conducted by DRT, and, therefore seeks for necessary directions.

Sri Janardhan Rao Kotama Raju, learned counsel appearing for respondents 1 and 2, contended that the petitioner has no *locus standi* since the respondents 1 and 2 still remain to be the owners of the property. He further contended that the impugned notice was issued to the original allottee i.e., third respondent as to why the allotment of the shed should not be cancelled duly determining the Lease-cum-Sale Agreement dated 26.10.1992, as respondents 1and 2 are not parties before the DRT and that the first respondent-Corporation has not issued any 'No Objection Certificate' to the original allottee for availing finance from the bank and therefore, the impugned notice does not suffer from any legal infirmities warranting interference of this Court.

The facts are not in dispute. Third respondent was allotted Shed No. D-58, Phase V, IDA Jedimetla, Hyderabad, by virtue of Lease-cum-Sale Agreement dated 26.10.1992. Thereafter, it has obtained loan from the Bank of Madura Limited, Hyderabad keeping the property as security. Since the third respondent committed default in repayment of the loan, the bank sought for attachment and sale of properties. Therefore, DRT sold the properties by way of public auction and the petitioner Company became the highest bidder. Pursuant to the order of confirmation of sale of Immovable properties, DRT issued the sale certificate in favour of the petitioner. The first respondent having come to know of the above fact, issued the impugned notice to the third respondent of which a copy was also marked to the petitioner. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner placed reliance on a decision reported in **Punjab National Bank v. O.C.Krishnan**, wherein their lordship held as follows:

> "The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the

Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions."

In this case, respondents 1 and 2 are now seeking to cancel the auction conducted by DRT since respondents 1 and 2 did not sell the properties to the third respondent and that it is only an allotment under Lease-cum-Sale Agreement. Admittedly, respondents 1 and 2 are not parties to the proceedings before DRT. Therefore, sale of property by DRT and purchase of the same by the petitioner Company is not binding on the first respondent. Respondents 1 and 2 have every right to issue show cause notice to the original allottee, who violated the terms and conditions of the Lease-cum-Sale Agreement. Therefore, the impugned notice does not suffer from serious infirmities warranting interference of this Court. It is also brought to the notice of this Court by the learned counsel appearing for the petitioner that the respondents 1 and 2 has to challenge the sale certificate issued by DRT, in accordance with Rule 11 of Income Tax Rules, which reads as under:

Investigation by Tax Recovery Officer:

1. Where any claim is preferred to or any objection is made to the attachment or sale of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

   Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

2. Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security otherwise as the Tax Recovery Officer shall deem fit.

3. The claimant or objector must adduce evidence to show that-

   a. (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

b. (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of the property in question.

4. Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit from attachment or sale.

5. Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

6. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right, which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

The above provision has no application to the present case.

As the original allottee i.e., third respondent had violated the terms and conditions of Lease-cum-Sale Agreement, respondents 1 and 2 are entitled to issue show cause notice to it. Therefore, the impugned notice does not suffer from any infirmities warranting interference of this Court. However, the petitioner Company has purchased the property in pursuance of the advertisement by DRT. Therefore, in my considered opinion, the petitioner Company has every right to participate in the proceedings that may be initiated by respondents 1 and 2. Perhaps that is the reason why respondents 1 and 2 have marked a copy of the show cause notice to the petitioner-Company.

Hence, the petitioner Company shall submit its explanation within one week from the date of receipt of a copy of this order and after giving such

explanation, respondents 1 and 2 shall consider the same and pass appropriate orders in accordance with law.

With the above directions, the writ petition is disposed of. No costs.

29.11.2004

usd

To

1. The Senior Manager, Andhra Pradesh Industrial Infrastructure Corporation,
   Mr.M.Narasimha Rao, O/o.5-9-58/8, Parishrama Bhavan,
   Fateh Maidan Road, Hyderabad-028,

2. The Senior Manager, Andhra Pradesh Industrial Infrastructure Corporation,
   Mr.K.Narasimha Rao IE, O/o. (E), Sanathnagar,
   Hyderabad-500 018.

3. Sree Tirumala Srinivas Casting Pvt Ltd.,
   Shed No.D-58, Phase-V, IDA.Jeedimetla, Hyderabad-500 055.

4. Two CD copies.